

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

CHRISTOPHER A. SANTAMOUR  
and JOHN KELLY PEIGHTAL,  
individually and on behalf of all others  
similarly situated,

Plaintiffs,

v.

UPS GROUND FREIGHT, INC., a  
Virginia Corporation,

Defendant.

NO. 2:17-CV-0196-TOR

ORDER GRANTING UNOPPOSED  
MOTION FOR FINAL APPROVAL  
OF CLASS ACTION SETTLEMENT  
AND GRANTING MOTION FOR  
AWARD OF ATTORNEYS' FEES  
AND COSTS

BEFORE THE COURT are Plaintiffs' Unopposed Motion for Order Granting Final Approval of Class Action Settlement (ECF No. 28) and Motion for Order Granting Award of Attorneys' Fees and Costs (ECF No. 24). These matters were heard with oral argument on June 26, 2018. The Court has reviewed the record and files herein, and is fully informed. For the reasons discussed below, Plaintiffs' Unopposed Motion for Order Granting Final Approval of Class Action

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CLASS ACTION SETTLEMENT AND GRANTING MOTION FOR AWARD  
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1 Settlement (ECF No. 28) is **GRANTED** and Plaintiffs’ Motion for Order Granting  
2 Award of Attorneys’ Fees and Costs (ECF No. 24) is **GRANTED**.

### 3 **BACKGROUND**

4 Plaintiffs Christopher A. Santamour, John Kelly Peightal, and others  
5 similarly situated brought this class action on behalf of 133<sup>1</sup> Washington State  
6 residents employed by Defendant UPS Ground Freight, Inc. as truck drivers paid  
7 on a per-mile piece rate basis from May 12, 2014 through February 3, 2018 (“class  
8 period”). ECF No. 16 at 5. Plaintiffs allege that Defendant failed to pay hourly  
9 and separate wages for time spent on statutory rest periods and apart from and in  
10 addition to the piece-rate pay in violation of Washington Administrative Code  
11 (“WAC”) 296-126-092(4). ECF Nos. 1-2 at ¶¶ 25-34; 16 at 5. Plaintiffs also  
12 allege willful and intentional withholding of wages pursuant to RCW 49.52.050  
13 and 49.52.070. ECF Nos. 1-2 at ¶¶ 35-38; 16 at 5.

14 On February 9, 2018, the parties sought preliminary approval of their class  
15 action settlement and moved the Court to schedule a final fairness hearing. ECF  
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18 <sup>1</sup> The parties originally anticipated the Settlement Class consisted of 126  
19 members, but discovered during the notice process that there are 133 total Class  
20 Members. ECF No. 28 at 8 n.2.

No. 16. On March 1, 2018, the Court granted the motion for preliminary approval and certified the proposed class. ECF No. 20.

On May 18, 2018, Plaintiffs filed a request for an award of attorneys' fees and costs. ECF No. 24. On June 14, 2018, Plaintiffs filed an unopposed motion for final approval of class action settlement. ECF No. 28.

## DISCUSSION

### I. Approval of Class Action Settlement

Approval of a proposed class action settlement is governed by Federal Rule of Civil Procedure 23(e). Under Rule 23(e), approval of a proposed settlement “must be accompanied by a finding that the settlement is ‘fair, reasonable, and adequate.’” *Lane v. Facebook, Inc.*, 696 F.3d 811, 818 (9th Cir. 2012) (quoting Fed. R. Civ. P. 23(e)). In determining whether a settlement meets this requirement, a court must “evaluate the fairness of a settlement as a whole, rather than assessing its individual components.” *Id.* at 818-19. “Although Rule 23 imposes strict procedural requirements on the approval of a class settlement, a district court’s only role in reviewing the substance of that settlement is to ensure that it is fair, adequate, and free from collusion.” *Id.* at 819 (quotation and citation omitted).

To assess the fairness of a settlement, the court looks to the following *Churchill* factors:

(1) the strength of the plaintiffs’ case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action

1 status throughout the trial; (4) the amount offered in settlement; (5) the  
2 extent of discovery completed, and the stage of the proceedings; (6) the  
3 experience and views of counsel; (7) the presence of a governmental  
participant; and (8) the reaction of the class members of the proposed  
settlement.

4 *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 963 (9th Cir. 2009) (citation  
5 omitted); *Churchill Vill., L.L.C., v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004)).  
6 Additionally, “the settlement may not be the product of collusion among the  
7 negotiating parties.” *Churchill*, 361 F.3d at 576.

8 These factors are not exclusive. *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d  
9 1370, 1376 (9th Cir. 1993). The court may also consider: (1) the advantages of  
10 settlement versus the probable outcome of a trial; (2) the extent of participation in  
11 the settlement negotiations by class members and by a judge; (3) a settling party’s  
12 ability to satisfy its financial obligations under the settlement agreement as  
13 compared to its ability to pay a potential judgment; (4) the reasonableness of any  
14 provisions for an award of attorney’s fees; (5) the fairness and reasonableness of  
15 the procedure used to calculate payment of individual claims; and (6) the apparent  
16 intrinsic fairness of the settlement terms. *See Manual for Complex Litigation*  
17 (Fourth) § 21.62.

18 For the reasons discussed below, the Court concludes that the proposed  
19 settlement satisfies the requirements of Rule 23(e).

1           **A. The Strength of Plaintiffs' case; the Risk, Expense, Complexity, and**  
2           **Likely Duration of Further Litigation; and the Risk of Maintaining**  
3           **Class Action Status**

4           Defendant vigorously contests Plaintiffs' allegations that it engaged in a  
5           systematic course of unlawful conduct with respect to truck drivers who were paid  
6           on a piece-rate basis and not paid separately and hourly for rest periods in addition  
7           to the per-mile piece-rate pay. ECF No. 28 at 18. Plaintiffs admit that Defendant  
8           raised several objections that could lead a court to deny class certification, decline  
9           to find liability, rule in Defendant's favor on the merits, and/or significantly reduce  
10          damages. ECF Nos. 28 at 18; 30 at ¶ 7. Plaintiffs insist that under this settlement,  
11          Class Members will avoid all of these risks and obstacles to recovery, and receive  
12          substantial benefits expeditiously. ECF No. 28 at 19.

13          Defendant appears to have a strong case, which advises acceptance of the  
14          proposed settlement. The Court finds that the risks and costs attendant to  
15          continued litigation weigh strongly in favor the settlement. The risk that the Court  
16          may not have granted class certification due to Defendant's defenses also weighs  
17          in favor of the settlement.

18           **B. The Amount Offered in Settlement**

19          Plaintiffs' counsel calculated the total amount owed for unpaid rest periods  
20          to the Class to be approximately \$391,838.63, exclusive of interest and double  
21          damages. *Id.* at 20. Plaintiffs agreed to resolve this matter for \$305,834.00 or

1 approximately 78% of the total amount at issue, excluding penalties and interest, in  
2 part because of Defendant's potential defenses and other risks involved in litigating  
3 this case. *Id.* at 20-21. The Court finds that this substantial level of recovery,  
4 considering the risks, weighs in favor of accepting the proposed settlement.

5 **C. The Extent of Discovery Completed and the Stage of the Proceedings**

6 The parties represent that they engaged in significant discovery before  
7 reaching the proposed settlement. ECF Nos. 28 at 19; 30 at ¶ 7. Plaintiffs assert  
8 that the information and documents include Plaintiffs' personnel files, itemized  
9 wage statements, driver logs, Defendant's class lists of union and non-union  
10 drivers, payout charts for the Class Period, Defendant's Orientation Manual and  
11 Employee Reference Guide documents, additional wage statements and a  
12 randomized sample of fifteen non-union drivers' DOT driver logs, and the  
13 National Master UPS Freight Collective Bargaining Agreement. ECF Nos. 28 at  
14 19-20; 30 at ¶ 7. Plaintiffs state that Class Counsel was able to calculate and  
15 reasonably discount the total estimated potential damages for the Class based on  
16 the data and documents. ECF No. 28 at 20.

17 Class Counsel insists they are confident that a fair and reasonable settlement  
18 was obtained for the Class given the totality of the circumstances. *Id.* The record  
19 further reflects that Defendant has been diligent in defending against Plaintiffs'  
20 claims. There being no indication that the parties neglected their duties to

1 vigorously prosecute and defend this case, the Court finds that this factor weighs in  
2 favor of accepting the proposed settlement.

### 3 **D. The Experience and Views of Counsel**

4 This case has been prosecuted and defended by experienced class action and  
5 employment attorneys, all of whom have indicated that the terms of the proposed  
6 settlement are fair, reasonable and adequate, and are in the best interests of the  
7 settlement class as a whole. ECF Nos. 28 at 21-22; 30 at ¶ 6. These views are  
8 entitled to deference and weigh in favor of the proposed settlement.

### 9 **E. The Reaction of Settlement Class Members**

10 The parties indicate that the Class' reaction to the settlement has been  
11 positive, as evidenced by the fact that there are no exclusions or objections. ECF  
12 No. 28 at 14-16, 22. All but one Class Member received actual notice of the  
13 settlement, and no Class Members objected to or opted-out of the settlement. ECF  
14 Nos. 28 at 14, 23; 29 at ¶¶ 10, 14-15. 133 Class Members will participate in the  
15 settlement and share the net settlement amount in accordance with their  
16 proportionate share. ECF Nos. 28 at 14, 22; 29 at ¶ 14. This is a strong indication  
17 that the Class favors settlement over continued litigation and this factor weighs in  
18 favor of the proposed settlement.

### 19 **F. Other Applicable Factors**

20 The settlement was the product of an extensive arm's-length negotiation

1 with the assistance of an experienced mediator. ECF Nos. 28 at 21; 30 at ¶ 7. The  
2 settlement negotiations were adversarial and non-collusive, and conducted by  
3 counsel deeply familiar with class action litigation. ECF No. 28 at 21. The Court  
4 finds that there is no indication whatsoever that the agreement was influenced by  
5 improper collusion among counsel.

6 The Court also finds that the Class Notice process was adequate to satisfy  
7 due process. ECF No. 28 at 22-23. There was only one undeliverable Class  
8 Notice and thus all Class Members were sent the Class Notice and over 99% of the  
9 Class Members received the notice packets and actual notice of the settlement.  
10 ECF Nos. 28 at 23; 29 at ¶ 10. The Court finds that the Notice was the best notice  
11 practicable under the circumstances, provided due and adequate notice of the  
12 proceedings and of the matters set forth therein, and fully satisfied all applicable  
13 requirements of law and due process. Accordingly, the Court grants Plaintiffs'  
14 motion for final approval of class action settlement.

## 15 **II. Attorneys' Fees and Costs**

16 Plaintiffs seek final approval of an award of attorneys' fees to Class  
17 Counsel pursuant to Federal Rules of Civil Procedure 23(h) and 54(d)(2) in the  
18 total combined amount of \$76,458.50, plus reimbursement of actual litigation costs  
19 of \$10,000. ECF Nos. 24 at 6; 28 at 23-24. The requested fees represent 25% of  
20 the gross settlement amount. ECF Nos. 24 at 6; 28 at 23.

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1 Federal Rule of Civil Procedure 54(d)(2) specifies that requests shall be  
 2 made by motion “unless the substantive law requires those fees to be proved at trial  
 3 as an element of damages,” but the rule does not itself authorize the awarding of  
 4 fees. Fed. R. Civ. P. 54(d)(2). Federal Rule of Civil Procedure 23(h) provides  
 5 that, “[i]n a certified class action, the court may award reasonable attorney’s fees  
 6 and nontaxable costs that are authorized by law or by the parties’ agreement.” Fed.  
 7 R. Civ. P. 23(h). “While attorneys’ fees and costs may be awarded in a certified  
 8 class action where so authorized by law or the parties’ agreement, courts have an  
 9 independent obligation to ensure that the award, like the settlement itself, is  
 10 reasonable, even if the parties already agreed to an amount.” *In re Bluetooth*  
 11 *Headset Prods. Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011) (citation omitted).  
 12 An attorney is entitled to “recover as part of the award of attorney’s fees those out-  
 13 of-pocket expenses that would normally be charged to a fee paying client.” *Harris*  
 14 *v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (quotation and citation omitted).

#### 15 **A. Attorneys’ Fees**

16 In diversity actions such as this one, the Ninth Circuit applies state law to  
 17 determine the right to fees and the method for calculating them. ECF No. 1 at ¶ 3;  
 18 *Mangold v. California Pub. Utilities Comm’n*, 67 F.3d 1470, 1478 (9th Cir. 1995).  
 19 Washington law provides the basis for an award of attorney’s fees and costs under  
 20 RCW 49.46.090 for violations of minimum wage and overtime laws, and RCW

1 49.52.070 for an employer who willfully withholds wages. *See* ECF No. 24 at 12-  
2 13.

3 “Where a settlement produces a common fund for the benefit of the entire  
4 class,” as here, “courts have discretion to employ either the lodestar method or the  
5 percentage-of-recovery method” to determine the reasonableness of attorneys’  
6 fees. *Bluetooth Headset*, 654 F.3d at 942. Under Washington law, “the  
7 percentage-of-recovery approach is used in calculating fees in common fund  
8 cases.” *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002).

9 In common-fund cases, the “benchmark” award is 25% of the recovery  
10 obtained. *Id.* (citation omitted). Other factors to consider include:

11 the extent to which class counsel achieved exceptional results for the class,  
12 whether the case was risky for class counsel, whether counsel’s performance  
13 generated benefits beyond the cash settlement fund, the market rate for the  
14 particular field of law (in some circumstances), the burdens class counsel  
15 experienced while litigating the case ..., and whether the case was handled  
16 on a contingency basis.

17 *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 954-55 (9th Cir. 2015)  
18 (quoting *Vizcaino*, 290 F.3d at 1048-50) (quotations omitted).

19 Here, Class Counsel seeks 25% of the non-revisionary common fund  
20 generated for the benefit of the Class, which is the benchmark fee award. ECF No.  
24 at 14. The Court considers the other factors below.

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## 1. Results Achieved and Risk of Litigation

“[T]he most critical factor is the degree of success obtained.” *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983). Class Counsel asserts they obtained an excellent result for the Class in view of the strength and possible range of recoveries for the Class’ claims, and the great risks posed in continuing litigation. ECF No. 24 at 16. Plaintiffs state that the gross settlement amount represents approximately 78% of Class Counsel’s estimate of the full value of the Class’ potential recovery on the claim for failure to pay hourly and separately for rest break time, excluding double damages and interest. *Id.* Plaintiffs argue that the settlement will provide immediate compensation to the Settlement Class and will avoid the substantial risks of less or no recovery presented by continued litigation. ECF Nos. 24 at 16-17; 25 at ¶ 19; 26 at ¶ 13.

Plaintiffs concede that Defendant presented a number of compelling defenses and continues to deny the claims and contentions alleged in the Complaint. ECF No. 24 at 16. Defendant claims that the arguments used by Plaintiffs only apply to agricultural workers. *Id.* at 17. Defendant asserts it encouraged drivers to take breaks and account for those breaks in its pay. *Id.* Defendant also insists that Plaintiffs’ claims could be retroactively preempted by the Federal Aviation Authorization Administration Act preemption and union drivers are preempted by the Labor-Management Relations Act of 1947. *Id.*

1 Additionally, Defendant argues that Plaintiffs will be unable to certify the class and  
2 are not entitled to double damages and prejudgment interest. *Id.* at 17-18.

3 Accordingly, the Court finds that Plaintiffs and Class Counsel's recovery of  
4 \$305,834.00 constitutes an exceptional result for the Class given these obstacles  
5 and the risks of further litigation.

## 6 **2. Counsel's Performance**

7 Class Counsel litigated this case with great skill and performed high quality  
8 work, as reflected in the results obtained. Class Counsel has demonstrated their  
9 diligence in this action and their experience in litigating class action cases. *See*  
10 ECF Nos. 24 at 18-19; 25 at ¶¶ 5-16; 26 at ¶¶ 4-5. Class Counsel also conducted  
11 substantial discovery and investigation regarding class certification and the merits  
12 of the case. ECF No. 24 at 19. This factor weighs in favor of granting the  
13 requested fee.

## 14 **3. Market Rate**

15 The Ninth Circuit has rejected the requirement that a court should determine  
16 a reasonable fee by attempting to replicate the market rate. *Vizcaino*, 290 F.3d at  
17 1049. "[I]n most cases it may be more appropriate to examine lawyers' reasonable  
18 expectations, which are based on the circumstances of the case and the range of fee  
19 awards out of common funds of comparable size." *Id.* at 1050.

1 Here, Plaintiffs emphasize that courts routinely award attorneys' fees in the  
2 20-33% range in wage and hour class actions. ECF No. 24 at 19. Plaintiffs  
3 compare various cases in Washington and California, and state that Class Counsel  
4 has obtained fees of 30% of the common fund in numerous piece-rated class  
5 actions involving truck drivers, including several prior cases in Washington. *See*  
6 *id.* at 19-20. This factor then weighs in favor of granting the requested attorneys'  
7 fees.

#### 8 **4. Burdens Experienced by Class Counsel and Contingency Basis**

9 Class Counsel took this case on a contingency fee basis and they advanced  
10 all of the costs of litigation. ECF No. 26 at ¶ 7. Class Counsel asserts that the  
11 amount of uncompensated time was substantial. *Id.* These burdens are relevant  
12 circumstances and weigh in favor of granting the fee.

#### 13 **B. Lodestar Cross-Check**

14 District courts often use the lodestar method as a cross-check on the  
15 reasonableness of the percentage award. *Vizcaino*, 290 F.3d at 1050. The lodestar  
16 method involves multiplying the number of hours reasonably expended on the  
17 claim or motion by a reasonable hourly rate. *Camacho v. Bridgeport Fin., Inc.*,  
18 523 F.3d 973, 978 (9th Cir. 2008); *Scott Fetzer Co. v. Weeks*, 122 Wash.2d 141,  
19 149-50 (1993). The calculation of reasonable hours and hourly rate is entrusted to  
20 the discretion of the court applying the principles set forth in *Hensley v. Eckerhart*,

1 in light of the court's first-hand contact with the litigation and attorneys involved.  
2 *Costa v. Comm'r of Soc. Sec. Admin.*, 690 F.3d 1132, 1135 (9th Cir. 2012).

### 3 **1. Hours Expended**

4 When determining the reasonableness of the hours expended, a court should  
5 not consider hours that are "excessive, redundant, or otherwise unnecessary."  
6 *Hensley*, 461 U.S. at 434. Here, Class Counsel spent 208.45 hours on this  
7 litigation, excluding time that will be required to be spent preparing the final  
8 approval motion papers and attending the final approval hearing. ECF No. 24 at  
9 21. Class Counsel estimates that an additional 25 hours will be spent drafting  
10 papers in support of an order finally approving the settlement, preparing for and  
11 attending the final fairness hearing, responding to inquiries from Class Members,  
12 working with the settlement administrator, carrying out the settlement, and other  
13 miscellaneous activities. ECF Nos. 24 at 22; 25 at ¶ 24. Nothing in the record  
14 suggests that any of the hours claimed should be disallowed.

### 15 **2. Hourly Rate**

16 When determining the reasonableness of the attorney's proposed hourly rate,  
17 the court looks to hourly rates prevailing in the relevant legal community for  
18 similar work performed by attorneys of comparable skill, experience, and  
19 reputation. *Ingram v. Oroudjian*, 647 F.3d 925, 928 (9th Cir. 2011) (citation  
20 omitted). A reasonable hourly rate should account for factors such as the

1 attorney's customary hourly billing rate, the level of skill required by the litigation,  
2 the time limitations imposed on the litigation, the amount of potential recovery, the  
3 attorney's reputation, and the undesirability of the case. *Bowers v. Transamerica*  
4 *Title Ins. Co.*, 100 Wash.2d 581, 597 (1983).

5 The Court, based on its independent review as well as its review of the  
6 supporting documents submitted by Plaintiffs, finds the rates billed by Plaintiffs'  
7 counsel and paralegals are commensurate with the prevailing rates for similar  
8 representation in the relevant market. ECF Nos. 25 at ¶¶ 18, 22-23; 26 at ¶ 8; *see*  
9 *Ingram*, 647 F.3d at 928 (holding that a district court may rely on its own  
10 knowledge and experience when determining a reasonable hourly rate for the  
11 services performed). Class Counsel also has extensive experience in class action  
12 wage and employment litigation, as previously discussed. *See* ECF Nos. 25; 26.

13 Additionally, the declarations and other materials filed by Class Counsel  
14 show that their fees for work done on this case, if charged at current hourly rates,  
15 would come to \$91,889.25. ECF Nos. 24 at 22; 25 at ¶ 22. Yet, Class Counsel  
16 only requests \$76,458.50, which is 83% of Class Counsel's lodestar and results in  
17 a non-existent multiplier. ECF No. 24 at 22-23. The Court then finds that this  
18 request is reasonable as it is less than the lodestar amount.

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### **C. Litigation Costs**

Class Counsel requests an award of costs in the amount of \$10,000, which is less than the \$18,850.95 in actual litigation costs incurred. ECF Nos. 24 at 24; 25 at ¶¶ 26-27; 26 at ¶ 15. The itemized list of expenses provided by counsel supports a conclusion that the expenses were reasonably incurred in prosecution of this litigation and were reasonably necessary. ECF Nos. 25 at ¶¶ 26-27; 26 at ¶ 15. The requested amount of \$10,000 is less than the amount actually incurred and is consistent with the settlement agreement, preliminarily approved by the Court, and noticed to the Class. ECF No. 24 at 24. Class Counsel asserts that the costs are reasonable and were primarily incurred on filing and service fees, legal research fees, mediator's fee expenses, and travel costs for the meditation. *Id.* at 25. The Court finds that the requests for costs is reasonable and reflects necessary expenditures to obtain a favorable settlement.

### **III. Class Representative Service Awards**

Plaintiffs request approval of the proposed \$15,000 in total Class Representative Service Awards, which is \$7,500 to both of the Class Representatives. ECF No. 28 at 24. Class Counsel emphasizes that no Class Member has objected and the awards are intended to recognize the time, effort, and risk that Plaintiffs undertook in bringing this case. *Id.* Class Counsel insists that



1 the awards are warranted and Plaintiffs provided invaluable assistance to Class  
2 Counsel and the Class. *Id.* at 24-26.

3 These incentive awards are reasonable and do not undermine Plaintiffs'  
4 adequacy as the Class Representatives. Rather, the awards reasonably compensate  
5 Plaintiffs for the time and effort that they expended in serving as Class  
6 Representatives, assisting in the investigation, participating in and keeping abreast  
7 of the litigation, and reviewing and approving the proposed settlement terms after  
8 consulting with Class Counsel.

9 **ACCORDINGLY, IT IS ORDERED:**

10 1. Plaintiffs' Unopposed Motion for Order Granting Final Approval of  
11 Class Action Settlement (ECF No. 28) is **GRANTED**.

12 2. The Court finds that Notice to the Settlement Class has been  
13 completed in conformity with the Preliminary Approval Order. ECF No. 20.

14 3. Pursuant to Federal Rule of Civil Procedure 23(b)(3), the Court  
15 certifies for the purposes of settlement, the following class: all truck drivers or any  
16 similar positions employed by the UPS Ground Freight, Inc. who resided in  
17 Washington State, drove at least one route of three or more hours within  
18 Washington State, and were paid on a per-mile basis by means of mileage pay  
19 from May 12, 2014 through February 3, 2018.

1           4.     The Court has appointed Christopher A. Santamour and John Kelly  
2 Peightal as Class Representatives.

3           5.     The Court has appointed Craig J. Ackermann and India Lin Bodien as  
4 Class Counsel.

5           6.     The Court has appointed Rust Consulting, Inc. as Settlement  
6 Administrator.

7           7.     The Court approves the form and content of the written notice. *See*  
8 ECF No. 17 at 49-55 (Ex. A).

9           8.     There have been no timely-filed objections to the settlement.

10          9.     The terms set forth in the settlement are approved as being fair,  
11 adequate, and reasonable in light of the degree of recovery obtained in relation to  
12 the risks faced by the Settlement Class in litigating the claims. The Settlement  
13 Class is properly certified as part of this settlement. The relief provided to the  
14 Settlement Class under the settlement agreement is appropriate as to the individual  
15 members of the Settlement Class and as a whole.

16          10.    Plaintiffs' Motion for Order Granting Award of Attorneys' Fees and  
17 Costs (ECF No. 24) is **GRANTED**. The Court approves the payment of  
18 \$76,458.50 in attorneys' fees to Class Counsel as fair and reasonable. The Court  
19 approves the payment of \$10,000 to Class Counsel as reimbursement for litigation  
20 costs.

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1           11. The Court approves the service awards of \$7,500 to Christopher A.  
2 Santamour and \$7,500 John Kelly Peightal as Class Representatives.

3           12. Each member of the Settlement Class shall be entitled to receive an  
4 individual settlement share of the gross settlement amount of \$305,834.00 as set  
5 forth in the settlement agreement. The Court orders the parties to comply with and  
6 carry out all terms and provisions of the settlement, to the extent that the terms do  
7 not contradict or conflict with this Order and Judgment, in which case the  
8 provisions of this Order and Judgment shall take precedence and supersede the  
9 settlement.

10          13. All Settlement Class Members are bound by the terms of the  
11 settlement agreement. As of the settlement agreement's effective date, all  
12 Settlement Class Members shall conclusively be deemed to have irrevocably  
13 released, relinquished, and forever discharged all claims against Defendant and the  
14 other Released Parties as set forth in the settlement agreement. The Settlement  
15 Class Members are permanently barred from prosecuting against Defendant and  
16 the other released parties any and all of the released claims by Class Members, as  
17 defined in the settlement agreement.

18          14. Class Counsel and any counsel associated with Class Counsel are  
19 bound by the release of claims in favor of Defendant and the other Released Parties  
20 as set forth in the settlement agreement, and are permanently barred from

1 prosecuting against Defendant and the other released parties any and all of Class  
2 Counsel's released claims as defined in the settlement agreement.

3 15. Nothing in the settlement or this Order purports to extinguish or waive  
4 Defendant's rights to continue to oppose the merits of the claims in this action or  
5 class treatment of these claims in this case if the settlement fails to become final or  
6 effective, or in any other case without limitation. The settlement is not an  
7 admission by Defendant, nor is this Order and Judgment a finding of the validity of  
8 any allegations against Defendant or any wrongdoing by Defendant. Neither the  
9 settlement nor this Order and Court Judgment is a finding that certification of the  
10 Class is proper for any purpose or proceeding other than for settlement purposes in  
11 this proceeding.

12 16. No individuals have timely and properly excluded themselves from  
13 the Settlement Class. All members of the Settlement Class are, therefore, bound  
14 by this Order.


15 17. The entry of this Order and Judgment is without prejudice to the rights  
16 of the parties to enforce the terms of the settlement agreement and the rights of  
17 Class Counsel to seek the payment of fees and costs as provided in the settlement  
18 agreement. Without affecting the finality of this Order in any way, the Court  
19 retains jurisdiction over the claims against Defendant for purposes of resolving any  
20 disputes that may arise under the settlement agreement.

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1 The District Court Executive is directed to enter this Order and Judgment  
2 accordingly, provide copies to counsel and **CLOSE** the file.

3 **DATED** June 26, 2018.



  
THOMAS O. RICE  
Chief United States District Judge